

**POLANCO REDEVELOPMENT ACT REMEDIATION
AND CONDITIONAL IMMUNITY DRAFT AGREEMENT**

This Polanco Redevelopment Act Remediation and Conditional Immunity Agreement (“Agreement”) is entered into between the San Diego Regional Water Quality Control Board (“Regional Board”) and the Redevelopment Agency of the City of Chula Vista (“Agency”), as of April __, 2003, as a result of the following facts and circumstances:

1.1 The Regional Board has historically exercised regulatory oversight with respect to hazardous materials conditions on, beneath and around certain real property formerly referred to as the “Omar Rendering Company Site” (“Site”). (The Site shall be more particularly described in the Conceptual Remedial Action Plan (“Conceptual RAP”) referred to below in Section 1.4.) The Regional Board provided requirements and oversight for closure for the waste cell constructed in 1981 pursuant to Regional Board Order No. 80-06, “*Closure Requirements for the Omar Rendering Company Dumpsite in the Otay River Valley.*” Following this action, the Regional Board issued Order Nos. 87-141 and 97-40, Waste Discharge Requirements (WDRs) for the Site. These orders impose various on-going monitoring and reporting requirements related to Site conditions.

1.2 The current owner of the Site is Otay Mesa Ventures II, L.L.C., a Louisiana limited liability company (“Owner”). Owner is the responsible party at the Site and, along with affiliated entities, has been responding to Regional Board orders.

1.3 The Polanco Redevelopment Act, Health & Safety Code §33459, et seq. (the “Act”), provides that a duly formed redevelopment agency authorized to use the Act “may take any actions that the agency determines are necessary and that are consistent with other state and federal laws to remedy or remove a release of hazardous substances on, under, or from property within a project area...” Health and Safety Code §33459.1(a)(1). Under the Act, the Agency may cause a party to undertake and complete an action pursuant to Section 33459.1 on properties throughout the redevelopment areas of the City of Chula Vista (“City”). The Site is within the City’s redevelopment area, and the Owner will undertake and complete remedial work required to address releases at the Site. The Agency has proposed this Agreement with the Regional Board for the purpose of finalizing outstanding assessment and closure issues at the Site and to facilitate the redevelopment of the Site so that it can again be put to productive uses within the community.

1.4 The Agency has received a concept proposal for the development of the Site (the “Proposed Project”) from Knowlton Realty Advisors, LLC (“Developer”). In contemplation of this Agreement, the Agency has required the preparation of a Conceptual RAP that provides for the mitigation of certain environmental conditions at the Site. The draft Conceptual RAP is attached hereto as Exhibit A. It is intended that the draft Conceptual RAP approved by the Agency will be submitted to the Regional Board for review and approval prior to any work commencing at the Site. The Conceptual RAP will include: (1) the grading and soil management plan for the shallow soils at the Site necessary for redevelopment (the “Soil Requirements”); (2)

a summary of existing environmental requirements currently applicable to the Site; and (3) a framework for responding to the Clean Up and Abatement Order (CAO) that the Regional Board will issue to Owner requiring Owner to finalize assessment and remedial activities related to groundwater contamination at the Site. The draft CAO is attached hereto as Exhibit B___. As part of the framework for responding to the CAO, the Conceptual RAP provides that Owner will submit various workplans to the Regional Board for review and approval. As each such workplan is approved by the Regional Board, it will be incorporated into the Conceptual RAP. Once all of the workplans have been submitted and approved by the Regional Board, the Conceptual RAP shall become the approved remedial action plan ("RAP") for the Site, as contemplated by Section 33459.3 of the Health & Safety Code. The LandBank Group, Inc., a Louisiana corporation ("LandBank"), is a related entity to Owner. Owner shall cause LandBank to provide financial assurance for work at the Site, as required and approved by the Regional Board. It is intended that the Soil Requirements will be implemented by Developer concurrently with or prior to Owner's response to the Regional Board's CAO, and in a manner that will not impede any regulatory requirements the Regional Board may impose upon the Owner related to conditions at the Site.

1.5. On April 1, 2003 the Agency adopted a Resolution approving this Agreement with the Regional Board subject to the Regional Board's final approval thereof, and the satisfaction of all terms and conditions set forth herein. It is the intention of the Agency and the Regional Board, as provided for in §§33459.1 and 33459.3 of the Health and Safety Code, that completion of the RAP to the satisfaction of the Regional Board will satisfy the requirements of the Act and trigger immunity for (a) the Agency, and (b) the Developer, its affiliated entities, bona fide unrelated purchasers of the Site and their successors and assigns, and any person or entity providing financing to any of them (collectively, the "Immune Parties" and each an "Immune Party"), as provided under the Act. Prior to completion of the RAP, the Regional Board intends to provide conditional immunity to the Immune Parties, as specified below in Section 3.0.

1.6 Concurrent with its approval of this Agreement, the Agency approved that certain Risk Allocation Agreement between the Agency, LandBank, Owner, and Developer ("Risk Allocation Agreement"). Agency would not have entered into this Agreement but for the agreement of LandBank, Owner, and Developer to enter into the Risk Allocation Agreement and their fulfillment of their respective obligations thereunder. In addition, the Agency and the Developer will enter into an agreement for redevelopment of the Site.

NOW, THEREFORE, Agency and the Regional Board agree as follows:

2.1 The Regional Board agrees to review the draft Conceptual RAP and provide comments back to the Agency within thirty (30) days of the Agency's approval of this Agreement. Within ten (10) days of receiving comments from the Regional Board, the Agency will cause the preparation of a final Conceptual RAP that incorporates the Regional Board's comments. Provided that it is consistent with the Regional Board's comments, the Regional Board agrees to review and certify the final Conceptual RAP within ten (10) days of the Agency's submittal.

2.2 The County of San Diego's Department of Environmental Health (the "Health Department") shall oversee implementation and completion of the Soil Requirements by the Developer in a manner consistent with the grading plan and soil management plan referenced in the Conceptual RAP. The Regional Board shall oversee, with the Agency's assistance and cooperation, Owner's compliance with the requirements of the Conceptual RAP, the RAP, the proposed CAO, WDRs, or other administrative requirements the Regional Board may impose on Owner related to environmental conditions at the Site, other than Soil Requirements (collectively, the "Remedial Requirements"). In order to assist the Regional Board with groundwater oversight, the Agency agrees to meet and confer with property owners near the Site to the extent reasonably necessary to facilitate off-site placement and inspections of monitoring wells, or other reasonable non-invasive testing, as may be required by the Regional Board.

2.3 The Agency shall cause Owner to reimburse the Regional Board for actual costs incurred by the Regional Board for regulatory oversight of implementation of the RAP for the Site. The Regional Board shall administer cost recovery pursuant to this Agreement in accordance with the State Water Resources Control Board Cost Recovery Program for Spills, Leaks, Investigations, and Cleanups (SLIC).

2.4 The Developer will submit a certification to the Health Department once the Soil Requirements have been completed. The Health Department shall issue a notice of concurrence with the certification to the Developer and to the Regional Board, once it has determined that the required work has been completed. Within 30 days of the Regional Board's determination that the Soil Requirements have been satisfactorily completed, the Regional Board shall send a letter to the Developer stating that no further action is necessary with respect to the Soil Requirements.

2.5 Owner will submit a certification to the Regional Board, with a copy to the Agency, once the remedial actions required under the RAP have been completed. As provided under the Act, within sixty (60) days following the date the Regional Board finds that the remedial actions required under the RAP have been completed, the Regional Board shall notify the Agency in writing that the statutory immunity set forth in §33459.3 of the Health and Safety Code is applicable to the Agency and the Immune Parties with respect to the Remedial Requirements. The Regional Board acknowledges, consistent with standard remedy completion protocol, that: (1) any long-term operations and maintenance activities ("O&M") will be undertaken subsequent to the Regional Board's determination that the remedial actions required under the RAP have been completed; and (2) the existence of any such O&M obligations shall not affect the applicability of statutory immunity under the Act to the Immune Parties.

Conditional Immunity

3.0 As a result of, and in reliance upon, this Agreement, the Regional Board shall not require the Immune Parties to undertake further investigation or remediation of releases or discharges at the Site, provided that Owner has caused LandBank to provide the financial assurance described herein (hereinafter "Conditional Immunity"). The Regional Board is willing to provide this Conditional Immunity because, in addition to Owner's on-going commitment to comply with the Remedial Requirements, the Regional Board is requiring Owner to cause

LandBank to provide financial assurance that will ensure there are adequate resources available to complete further investigatory and remedial work at the Site. This Conditional Immunity will apply to the Immune Parties upon LandBank's provision of the approved financial assurance, as required and approved by the Regional Board. Once the Regional Board has approved completion of the remedial actions required under the RAP, the Immune Parties shall have full statutory immunity under the Act, and this Conditional Immunity shall terminate and be of no further force or effect.

The continued effectiveness of this Conditional Immunity is subject to the following conditions:

3.1 The benefited Immune Party, could not, prior to the date of this Agreement, have been required to undertake cleanup or abatement under §13304 of the Water Code for the discharge or release of hazardous substances at the Site.

3.2 The benefited Immune Party shall not undertake any land use or development project at Site that could exacerbate either the discharge of hazardous substances from the Site to waters of the state or any known or threatened condition of pollution or nuisance associated with prior discharge or deposit of petroleum hydrocarbon waste at or from Site.

3.3 The benefited Immune Party, shall not unreasonably prevent, delay, impair, or interfere with current or prospective investigation or cleanup and abatement activities, if any but shall rather cooperate to achieve the goals of the RAP.

3.4 The benefited Immune Party, shall allow the Regional Board, its employees and agents, access to the Site during normal business hours or upon request to investigate the conditions described in the Conceptual RAP, CAO, or WDR(s), that could affect water quality, to monitor ground water, and to obtain samples of soil and ground water at this Site.

3.5 The benefited Immune Party shall and hereby does acknowledge responsibility for cleanup and abatement of any discharge or deposit of hazardous substances at or from Site as a result of such party's activities at the Site that causes or threatens to cause conditions of pollution or nuisance.

4.0 Circumstances Supporting Determination.

4.1 The following circumstances support the determination that it is not against the public interest for the Regional Board to refrain from asserting its authority under §13304 of the Water Code over the Immune Parties, in this case.

4.2 The Regional Board has identified persons, none of whom are the Immune Parties, who have assumed responsibility for the discharge or deposit of hazardous substances at and from the Site and has directed Owner to propose and implement all necessary measures to mitigate and to abate existing or threatened pollution or nuisance associated with the discharge or deposit of hazardous substances.

4.3 Owner has been identified as a responsible party and remains responsible for any investigation, clean up, or abatement that may be required under §13304 of the Water Code in the future.

4.4 The Regional Board shall require Owner to cause LandBank to provide financial assurance that will ensure there are adequate resources available to complete further investigatory and remedial work at the Site.

4.5 Uncertainty regarding the potential liability for cleanup or abatement of environmental conditions at this Site has hindered redevelopment and economic revitalization of such properties in City's redevelopment area.

5.0 General Provisions

5.1 The Agency's obligations under this Agreement are undertaken for the benefit of the Regional Board and the Immune Parties only, and no rights of any other third parties to enforce these obligations are created hereby.

5.2 Except as expressly provided herein, neither the Regional Board, nor the Agency shall have any obligations with respect to the Site, or any physical condition existing thereon. Agency's and Regional Board's obligations under this Agreement are limited by the scope of the provisions herein, and nothing herein is intended to create the status of "responsible party" or "discharger" as a result of this exercise of either party's authority hereunder.

5.3 In the event that (a) the Agency does not approve the Proposed Project within 180 days of its approval hereof, or (b) there is a default or a failure of a condition under the Risk Allocation Agreement (after written notice to the defaulting party and a reasonable opportunity to cure the same), the Agency may terminate this Agreement upon written notice to the Regional Board, in which case neither party shall have any continuing responsibility hereunder. This Agreement does not constitute the Agency's approval of the Proposed Project, which the Agency reserves the right to approve or disapprove in its sole discretion.

5.4 This Agreement shall be effective as of the date of Regional Board approval hereof.

[NEXT PAGE IS SIGNATURE PAGE]

**SIGNATURE PAGE TO POLANCO REDEVELOPMENT ACT REMEDIATION AND
CONDITIONAL IMMUNITY AGREEMENT**

IN WITNESS WHEREOF, each if the parties hereto have caused this Agreement to be executed.

Redevelopment Agency of the
City of Chula Vista

By: _____
Steve Padilla, Chairman

ATTEST:

Laurie Madigan, Agency Secretary

APPROVED AS TO FORM:

Glen R. Googins, Agency Attorney

California Regional Water Quality Control Board,
San Diego Region

By: _____
John Robertus, Executive Officer